IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 818 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
NANABHAI SHABHAI RATHOD & 1 - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.
MR JR DAVE for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 06.05.1993 passed by the learned Judicial Magistrate, First Class, Court No. 2, Vadodara in Criminal Case No. 2379 of 1988 whereby, both the respondents – accused persons were acquitted

of the charges levelled against them.

2.0 The brief facts of the prosecution case are as under;

2.1 On 05.09.1988 the respondents herein were entrusted with the duty of taking an accused in a Criminal Case from the Central Jail, Vadodara to the Court of learned Chief Judicial Magistrate, Vadodara. Both the respondents – accused were serving in the Police Department of the appellant – State at the time when the alleged incident in question took place.

2.2 On reaching the Court premises, the accused in the said Criminal Case informed the respondents that he wanted to go to the Lavatory for attending the natural call which was permitted by the respondents. Accordingly, both the respondents waited for the accused outside the Lavatory. A few minutes thereafter, the respondents realized that the accused had escaped from the custody through the Lavatory and had ran towards a busy public locality. Therefore, both the respondents followed the accused but, were unsuccessful in catching hold of him.

2.3 A complaint with respect to the aforesaid offence was filed before Raopura Police Station. Necessary investigation was carried out and statements of witnesses were recorded. At the end of investigation, charge-sheet was filed against the respondents and trial was conducted. At the end of trial, the learned Magistrate acquitted the respondents of the charges levelled against them.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law

> and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 It is not in dispute that on the date of the alleged incident in question the respondents were entrusted with the duty of taking the accused from Vadodara Central Jail to the Court of learned Chief Judicial Magistrate, Vadodara in connection with a Criminal Case. It is also not in dispute that the accused fled from the custody while the respondents had permitted him to go to the Lavatory located in the Magisterial Court premises for attending the natural call. Therefore, the question that is required to be considered by this Court is as to whether the accused fled the scene of offence by befooling the respondents or, in other words, they were negligent in discharging their duty or as to whether the respondents were involved, in any manner, in helping the accused

flee from the custody.

7.0 The case of the respondents was that the accused had escaped from the window of the Lavatory located in the Court premises while respondent no. 1 was standing near the front door of the Lavatory and respondent no. 2 was standing on the back-side of the Lavatory and, therefore, there was no ill-intention on the part of the respondents. From the record, it appears that the prosecution has failed to prove that respondent no. 2 was in fact present at the relevant point of time behind the Lavatory. Moreover, no '*panch'* witnesses have also supported the prosecution case.

8.0 The '*panchnama'* of the scene of offence is on record at Exhibit – 15. From the said *'panchnama',* it transpires that the size of the window was such that it was sufficient for a person to pass through it. Apart from that the lower part of the said window was covered by an iron-sheet, thereby making it even more easier for any person to pass through it. Considering the facts and circumstances of the case, I am of the opinion that the window of the Lavatory was in such a condition which might have prompted the accused to escape through it and that there was no negligence on the part of the respondents.

9.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against them. In my view, the findings

recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

10.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with the reasons given by the Court, the decision of which is under appeal, will ordinarily suffice."

11.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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